IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.736 OF 2005

WITH

WRIT PETITION NOS.737 & 750 OF 2005

W.P.736/2005 :

Jaivantabai Motiram Naik. ...Petitioner.

Vs.

Sardar Partapsingh Education

Society & Ors. ...Respondents.

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W.P.737/2005 :

Pushpa D.Ujabare. ...Petitioner.

Vs.

Sardar Partapsingh Education

Society & Ors. ...Respondents.

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W.P.750/2005 :

Gangubai Madhukar Jagdhane. ...Petitioner.

Vs.

Sardar Partapsingh Education

Society & Ors. ...Respondents.

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Mr.M.P.Vashi for the Petitioner.

Mr.A.G.Kothari for Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 21, 2005.

P.C. :

In these three Petitions under Article 226 of the Constitution, orders passed by the Presiding Officer of the School Tribunal declining to condone the delay on the part of three employees in filing appeals under the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1971 have been called into question. The Petitioner in Writ Petition 736 of 2005 was working as a peon in the Second Respondent as a Class IV employee since 1980. In 1982 she became a permanent employee. The Petitioner in Writ Petition 737 of 2005 was working as a teacher since June 1989 and was a confirmed employee. The Petitioner in Writ Petition 750 of 2005 was working as a peon since 1980 and was also a confirmed employee. The three Petitioners had filed a Writ Petition in this Court (W.P.1139 of 2000) seeking an order and direction to the management to pay

salaries, dearness allowance and other benefits as prescribed in the report of the Fifth Pay Commission, the State Government having taken a decision to implement the report in relation to private schools. A Division Bench of this Court is stated to have issued directions on 12th April 2001 to the management to make payment in accordance with the recommendations in the report of the Fifth Pay Commission as accepted by the Government. According to the Petitioners, the management having failed to do so, they were constrained to file a Contempt Petition which came to be disposed of. Thereafter, in pursuance of the orders passed by the Court certain amounts were paid to the three employees as arrears. In May 2002, the Second Respondent closed for the Vacation at the end of the Academic Year and when the Institution reopened on 13th June 2002, the employees were prevented from reporting for duty. By a letter dated 1st August 2002, which was received by the employees on 1st October 2002, the management informed the employees that it had taken a decision to voluntarily close down the institution and that the services of the employees would consequently stand terminated.

Appeals were filed before the School

Tribunal on 24th March 2003 with applications for condonation of delay. There was a delay of approximately four and a half months. In the first Petition, the ground for condonation was that the employee had to undergo ophthalmic surgery and the medical prescription to show that the employee was under treatment from 4th November 2002 to 15th September 2003 was filed. In the second petition, the ground for condonation was that the Petitioner was undergoing gynaecological treatment and a medical certificate dated 11th September 2002 was again placed on the record. In the third petition, it was stated that the monther-in-law of the Petitioner had expired in November 2002 and she had consequently been required to visit her village to be present for the performance of the religious rites. A photo copy of the Railway Ticket of 24th November 2002 was filed on the record.

The Learned Judge has in my view taken a rather technical view of the applications for condonation of delay by holding that the marginal delay prior to the dates of the medical certificates filed in two cases and, in the third case, prior to the death of the mother-in-law has not been explained. In my view, having regard to the facts and circumstances of the three cases,

sufficient ground for condonation had been established. Applications for condonation have to be dealt with by the School Tribunal sympathetically. A considerable degree of hardship is placed upon a member of the teaching and non-teaching staff who is summarily dismissed from service. Of the three lady employees in the present cases, two are peons and one is an Assistant teacher each of whom had long years of service. The nature of the explanation which was tendered by each one of them was believable and was duly supported in each case by documentary material. The School Tribunal ought not to have adopted such a technical approach which has only led to a multiplicity of litigation.

The application for condonation filed by the Petitioners before the School Tribunal shall stand allowed. The appeals shall now proceed to a hearing on merits. Parties shall appear before the School Tribunal for receiving further directions on 4th April 2005. The School Tribunal shall fix a time schedule for the early disposal of the appeals consistent with the exigencies of its own work. The Petitions are accordingly disposed of. No order as to costs.

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